"WESTERN" VERSUS "ISLAMIC"
HUMAN RIGHTS CONCEPTIONS?
A Critique of Cultural Essentialism
in the Discussion on Human Rights

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I. A "WESTERN" CONCEPT?

"Human Rights: A Western Construct with Limited Applicability" is the polemical title of an article by Pollis and Schwab, two representatives of cultural relativism and most outspoken critics of universal human rights.[1] Pollis and Schwab argue that since human rights originated historically in Western Europe and North America, they are essentially connected—and indeed confined—to the cultural and philosophical concepts of the Occidental tradition. Scholars from various disciplines have expressed similar opinions. The German philosopher Picht, for example, derives the idea of human rights from ancient Stoicism that, in his opinion, has provided the metaphysical basis for the concepts of human dignity and human rights. Assuming that the particular ideas of Stoic philosophy—ideas that even in Europe are currently losing ground—will hardly ever be endorsed on a global scale, Picht comes to the skeptical conclusion that "the utopia of a global order of human rights is but an empty illusion."[2] Fikentscher, a German lawyer and historian, locates the historic origin of human rights in the sixteenth-century Netherlands, that is, in the context of the Dutch Protestant liberation movement against the Spanish Catholic occupation. With regard to the originally Christian motives underneath the Dutch struggle for rights and liberties, Fikentscher asserts ironically that "the mainly secular-minded 'Western' reform-

ers" in Third World countries unconsciously propagate Christian values: "not knowing what they are doing, they actually continue Christian missionary work."[3] The most prominent contemporary representative of an essentialist "Western" understanding of human rights, however, is Huntington, the prophet of the danger of a "clash of civilizations." In his global political map, human rights—as well as democracy, liberalism, and political secularism—belong exclusively to Western civilization.[4] Huntington is convinced that universalism of human rights is bound to fail. For people from other civilizations, he says, the only way in which to have full access to human rights is to adopt essentially "Western" values and hence to implicitly convert to Western civilization.

The assumption that human rights are essentially a "Western" concept can lead to different practical consequences. Cultural relativists, such as Pollis and Schwab on the left and Huntington on the right, reject universal human rights as a manifestation of Eurocentric arrogance or as an illusion doomed to collapse. Other scholars, such as Fikentscher, seem to defend the idea that the West has a global mission to fulfill. Tibi even invokes Hegel's metaphor of a "cunning of reason" to argue that European colonialism, for all its injustice, might have yielded some positive results as well. Tibi writes, "It was, as it were, a byproduct of the European conquest of the world, a byproduct in the sense of the Hegelian 'cunning of reason,' that the European cultural heritage has been disseminated; and human rights constitute a crucial component of that heritage."[5]

In opposition to essentialist "Western" claims of human rights, alternative conceptions meanwhile have been brought forward, conceptions that explicitly claim a non-Western cultural or religious origin. For example, Muslim authors or organizations have recently published a number of Islamic declarations of human rights that, in their own way, reflect the culturalism inherent in essentialist "Western" interpretations because these Islamic declarations, too, often claim an exclusive cultural and religious heritage of human rights. One of the earliest advocates of this new tendency is Mawdudi, an Islamist author from Pakistan, who vehemently attacks Western arrogance in the context of human rights. Alluding to the history of Western colonialism and imperialism, Mawdudi writes, "The people in the West have the habit of attributing every good thing to themselves and try to prove that it is because of them that the world got this blessing."[6] Against human rights standards of the United Nations, which in Mawdudi's opinion were one-sidedly shaped by "Western" philosophy, Mawdudi drafts a specifically "Islamic" conception of human rights based primarily on the Qur'an and the tradition (Sunna) of the prophet Muhammad.

To divide the idea of human rights into "Western," "Islamic," and other culturally defined conceptions, however, would be the end of universal human rights. The language of human rights would thus simply be turned into a rhetorical weapon for intercultural competition. In this essay, I try to find a way out of the predicament of cultural relativism versus cultural imperialism. What is needed, in my opinion, is a critical defense of universal human rights in a way that gives room for different cultural and religious interpretations and, at the same time, avoids the pitfalls of cultural essentialism. In the first few sections (sections II to V), I investigate the relationship between human rights and what usually is called the "Western" tradition. I then turn to a discussion of different "Islamic" interpretations of human rights (sections VI to X). The article concludes with some remarks on human rights as the center of a cross-cultural "overlapping consensus" (section XI).

II. HUMANITARIAN MOTIFS
IN EUROPEAN CULTURAL HISTORY

Human rights certainly did not develop in a cultural vacuum. Given that their historic breakthrough took place in North America and Western Europe, there are good reasons to assume that the genesis of the idea of human rights can, in one way or another, be linked to the religious, philosophical, and cultural sources of the Occidental tradition. This tradition indeed provides a number of humanitarian, emancipatory, egalitarian, and universalistic motifs that might have helped to shape the modern principles of human rights.[7] The fact that a *multiplicity* of such motifs can be identified should, at the same time, remind us that the Occidental tradition is merely an abstract conception covering different, and often antagonistic, currents and movements.

A religious and ethical motif that often has been called a main source of human rights in general is the Biblical idea that all human beings have equally been "created in the image of God" (Genesis 1:27) and thus have been endowed with an unalienable dignity. Referring to the special rank of the human person as an "image of God," the Bible states that the shedding of human blood must be considered one of the gravest crimes (Genesis 9:6). In Psalm 8 the singer, overwhelmed and struck down by the magnificence of creation, turns to God wondering, "What is man, that thou art mindful of him? And the son of man, that thou visitest him? For thou hast made him little lower than the angels and hast crowned him with glory and honour. Thou madest him to have dominion over the works of thy hands; thou hast put all things under his feet" (Psalm 8:4-6). In the New Testament the principle of

equality before God supersedes social and ethnic difference. Thus St. Paul emphasizes, "There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus" (Galatians 3:28). Comparable ideas of a spiritual unity of all of humanity also occur outside the Jewish-Christian holy scriptures, for example, in the writings of Stoic philosophers. The Roman emperor Aurelius, one of the most prominent Stoic authors, teaches that the human spirit emerges from divinity. He further points out that all human beings intimately belong together. They constitute one family united not by physical bonds of blood and seed but primarily by their common participation in the divine *logos*.[8]

Jewish-Christian as well as Stoic and other motifs have jointly formed the European natural law tradition that stretches from antiquity to modernity. The concept of natural law has different connotations. On one hand, the natural law tradition claims an unconditional authority of some basic normative principles that are supposed to be prior to human legislation and in this sense "natural" as opposed to merely artificial. Sophocles' Antigone provides an early example of such a conviction by invoking "unwritten laws" of eternal validity. On the other hand, the concept of natural law also connotes independence from an exclusively theocratic foundation of society and law. In this context, normative principles are thought to be "natural" in the sense of being understandable without explicit reference to a divine revelation and thus applicable to people outside of the dominant (i.e., Christian) religious tradition as well. Under this assumption, Bartolomé de Las Casas, a member of the Dominican order, became an ardent defender of the "natural rights" of non-Christian Indians in South America. He charged the European conquistadores with murder, robbery, and genocide, that is, brutal crimes that violate the natural law.[9] The natural law tradition therefore often has been listed as one of the most important sources of human rights in Western tradition.

Other scholars have located the historic origin of human rights in the Protestant Reformation, an event that Hegel praises as the very birth of modernity and modern freedom. In his philosophy of history, he writes that the Reformation is the banner of the free spirit around which the modern nations assemble.[10] Three generations after Hegel, Jellinek (1895) and Troeltsch (1911) argued that the Protestant emphasis on the individual free conscience as a precondition of authentic faith paved the way historically for the recognition of individual human rights.[11] Important steps toward human rights also can be seen in the "Petition of Right" of 1628 and the "Habeas Corpus Act" of 1679. One of the contributions of the British common law tradition, it has been argued, is the insight that rights require remedies in order to be effective because "where there is no remedy, there is no right."[12]

III. HUMAN RIGHTS: NO "NATURAL"
RESULT OF THE OCCIDENTAL TRADITION

It would be easy to add more examples of traditional humanitarian motifs that have been linked to the development of human rights. It would be problematic, however, to claim that these and similar motifs of the Occidental tradition represent immediate historic precursors of the modern idea of human rights. Strictly speaking, these motifs are not "sources" or "roots" from which human rights developed more or less naturally. The use of teleological metaphors such as "source" and "root" harbors the danger of cultural essentialism. The problem is that, from a cultural-essentialist perspective, human rights seem to be rooted in the "cultural genes" of a particular culture or religion that itself thus seems to be entitled to claim the achievement of human rights as an exclusive legacy. The Indian philosopher Kaviraj criticizes such an essentialist attitude toward human rights with the following words:

> While the idea of subjects as bearers of rights existed in a sketchy fashion in premodern history of Europe, these ideas were developed by a specific historical trajectory to produce the modern conception of a civil society and civic rights. Indeed, one danger of reading this too deep into the European past is that this encourages essentialist thinking. Achievement of a civil society then gets associated with a mysterious and indefinable feature of European culture or "Western spirit," which proves before the debate has begun that it is beyond the cultural means of other societies to create similar institutions.[13]

On closer investigation, it becomes evident that the humanitarian motifs mentioned earlier cannot be identified as premodern equivalents of modern human rights. It is well known, for example, that the Biblical idea of every person representing an "image of God" did not go along with demands of equality before the law. Although St. Paul emphasizes spiritual equality between free man and slave, he never criticizes slavery in social reality but instead advises, "Let every man abide in the same calling wherein he was called" (1 Corinthians 7:20). Paul even sends back the runaway slave Onesimus to his master Philemon.[14] Similarly, Aurelius, for all his stress on ethical unity of all men within the human family, does not challenge slavery as such. He praises the modesty of his father by saying that he never paid attention to "the comeliness of his slaves."[15]

Thomas Aquinas vindicates slavery as a consequence of Adam and Eve's original sin. Even in paradise, however, Aquinas thinks that human beings would have lived in relationships of political domination and subordination. Legal inequality, in his opinion, not only is a feature of the "postlapsarian" natural law (i.e., the situation after the fall of man) but also belongs to the pre-

lapsarian immaculate divine order.[16] In medieval cosmology, inequality, including inequality among human beings in their social and legal status, constitutes the very beauty of the hierarchical order of things. It is clear that in the framework of such a hierarchical worldview, human rights, in the modern sense of rights of equal freedom and participation, are inconceivable from the outset. This hierarchical understanding of creation even affects the medieval meaning of human dignity. It is indeed noteworthy that in medieval philosophy the term "dignity" is mostly used in the plural, thus indicating the *different dignities* of people in accordance with their different ranks, order, and estates in a feudal society.

One also should avoid overstating the impact of the Protestant Reformation on the historical development of human rights. To be sure, the Reformation marks a turning point in theological reasoning by challenging the clerical hierarchy of the Middle Ages. Luther's emphasis on the spiritual freedom of every Christian and the spiritual equality of all believers, however, was not meant to call into question the given social and political order. On the contrary, Luther was anxious not to conflate spiritual liberation with political and legal demands because such a conflation, he feared, would amount to a new legalism that would undermine the liberating theological message of the gospel. Hence if there is any connection between the Reformation and modern human rights, then it must be an *indirect* one. Troeltsch indeed emphasizes that it was not mainstream Protestantism but rather the "stepchildren of the Reformation" (i.e., individual dissenters and marginalized Protestant denominations) who paved the way for the adoption of religious liberty in the Anglo-Saxon countries.[17]

Finally, the English common law tradition does not immediately lead to human rights either. The principal witness in this regard is Burke, who plays off traditional rights of Englishmen against the purportedly abstract universal rights as they were propagated by the French Revolution. Referring to the 1628 "Petition of Right," Burke points out that in the English tradition, rights were considered a particular heritage to be passed on from generation to generation:

> In the famous law of the [third year] of Charles I, called the Petition of Right, the parliament says to the king, "Your subjects have inherited this freedom," claiming their franchises not on abstract principles "as the rights of men" but as the rights of Englishmen and as a patrimony derived from their forefathers.[18]

Burke's argument is that rights of freedom never can be created artificially on the basis of universal equality but rather must be cherished as a particular

historic legacy within a particular nation, as a partnership among "those who are living, those who are dead, and those who are to be born."[19]

Burke's polemic against the French Revolution is an early example of the critique of human rights. Not less than the idea of human rights itself, such a critique also is part of Western history. In the wake of Burke, Joseqh de Maistre ironically professes that he never has seen the subject of human rights, namely, man as such.[20] Similarly, Hegel, in his critique of the French Revolution, vehemently attacks the "abstractness of liberalism."[21] From a left-wing Hegelian point of view, Marx argues that the 1789 French declaration merely propagates the rights of an isolated and selfish individual. "The human right of freedom is not based on the community of man with man, it is based on the separation of man from man. It is the right of separation, i.e., the right of an individual completely confined to himself."[22] Schmitt, a right-wing Hegelian lawyer, also perceives human rights as a manifestation of a bourgeois ideology that undermines communitarian solidarity. Historically linked to a merely private individual morality and to a liberal economy, individual human rights, he says, are an element of disintegration: "all these elements of disintegration clearly aim at subordinating state and politics either to an individualistic and private morality or to the primacy of economic calculation."[23] At times, even Arendt seems to join the critics of human rights. Referring to the situation in refugee camps after the two world wars, she points out that people want to be recognized as members of their particular cultural and political communities rather than as abstract human beings.[24]

Conservative criticism of human rights used to be a widespread attitude among the Christian churches in Western and Central Europe. Traumatized by anti-clerical radicalism in the Jacobine phase of the French Revolution, the Catholic Church played, for more than a century, the role of the most influential opponent to human rights in general and to religious liberty in particular.[25] Starting with the letter of protest from Pope Pius VI against the Civil Constitution of the French clergy in 1791, a number of anti-liberal Papal documents were published, climaxing with the "Syllabus Errorum" in 1864. In this document, Pope Pius IX harshly condemned religious liberty and freedom of the press as examples of the grave errors of the modern era. After a period of a careful rapprochement that started at the end of the nineteenth century, the Catholic Church finally endorsed human rights and religious liberty during the Second Vatican Council, that is, as late as the 1960s.

The fact that the Catholic Church, as well as other Christian churches, rejected human rights over a considerable period of time indicates that human rights cannot appropriately be described as an "organic" result of the Occidental history and culture as a whole. Human rights did not develop as a "natural unfolding" of humanitarian ideas deeply rooted in the cultural and

religious traditions of Europe. On the contrary, people in the West, too, had (and still have) to fight to have their rights respected. In fighting for their human rights, they faced resistance not only from traditionally privileged groups such as the aristocracy and from advocates of an authoritarian state. Anti-liberal currents also were strong among representatives of the churches who feared that the emancipatory spirit of human rights would undermine the moral fabric of Christian society and the hierarchical structure of the clergy. Senghaas is thus right in rejecting cultural essentialist interpretation of human rights. These rights, he emphasizes, are "achievements brought about in long-lasting political conflicts during the process of modernization in Europe. They are by no means the eternal heritage of an original cultural endowment of Europe."[26]

IV. RETROSPECTIVE CRITICAL CONNECTION
BETWEEN HUMAN RIGHTS AND WESTERN TRADITION

Human rights involve far-reaching normative changes in the understanding of politics and law. Unlike in premodern times, people living in modern societies no longer can resort to more or less unquestioned authoritarian traditions to gain normative orientation. Instead, norms have become an object of active efforts; they are enacted by human legislation and remain open to challenges and critical debates. Habermas therefore suggests that human rights belong to a "posttraditional" normative reasoning that, he says, has replaced traditional forms of ethics rooted in religion or metaphysics.[27]

The term "posttraditional" rightly indicates that normative justification under the circumstances of modernity cannot be achieved simply by conjuring up traditional authorities. And yet the term is misleading because it can nourish the idea that posttraditional human rights require a rupture from all tradition. This, however, would be a problematic assumption. If human rights were to imply an abstract dichotomy between tradition and modernity, then those who continue to cherish their religious or cultural traditions would be conceptionally excluded from having full access to human rights. In other words, the acceptance of human rights, at least in principle, would be confined to a circle of people who implicitly or explicitly have broken away from their religious, philosophical, or cultural traditions. As a result of such a dichotomized view, universal human rights eventually would get lost in an ideology of progress, an ideology perhaps not less exclusivist in its consequences than is the essentialist equation of human rights with a particular list of exclusively "Western" or "Christian" values. Christian or Occidental mis-

sionary work would be replaced by a modernist *mission civilisatrice* directed against "premodern" cultures or worldviews. There are in fact scholars who subscribe to such a dichotomized view. The German philosopher Ebeling, for example, argues that people representing "premodern" cultures and religions, in particular Muslims, should be excluded from immigration and political participation in European societies.[28] Alluding to the battle between Tours and Poitiers in 732 when the Franconians repelled the Muslim invasion, Ebeling calls for a new intellectual battle of Western modernity against the influx of "premodern" Muslim immigrants and asylum seekers who, he thinks, currently are conquering Western societies.[29]

Against such an abstract dichotomy of tradition and "posttraditional" human rights, I would argue that human rights can meaningfully and productively be connected with different traditions. Once again, the Catholic Church provides an illuminating example. After a long period of reluctance, if not resistance, the Catholic Church finally did endorse human rights and religious liberty.[30] The Second Vatican Council's declaration *Dignitatis humanae* in 1965 explicitly appreciates the modern understanding of human dignity based on the recognition of human freedom and responsibility. Even though the Second Vatican Council's declaration clearly marks a turning point within the history of the Church, it is not meant to be a total rupture from the Catholic tradition. Rather, the Church considers human rights to be a modern way of protecting that unconditional dignity of every human being that always has been a part of the Christian message. The Church's commitment on behalf of human rights, albeit a rather recent development, thus appears to remain in keeping with the Christian tradition, or more precisely, with a revised and modernized version of Christian tradition more appropriate for Christians living under the circumstances of modernity.

Protestant denominations today also understand and foster human rights as a consequence of Biblical commands and Christian impulses. In 1977 the churches of the Lutheran World Federation held a conference in which they claimed that secular human rights can be appreciated from the perspective of the Christian Reformation because "it was the intention of the reformers that man should learn to let God be God in order that man himself might become man and the world remain the world."[31] The working papers published by the World Association of Reformed Churches in 1976 point to the right of resistance as a contribution of the Calvinistic tradition to the development of human rights.[32] Connecting human rights with humanitarian elements of the Western tradition, of course, is not a privilege of Christians only. One also can refer to ancient Greek philosophy, the Renaissance, the English principle of the "rule of law," the early modern Enlightenment, and other currents in Western history that, in one way or another, provide occasions for an "incul-

turation" of human rights. Given such possibilities of inculturation, human rights certainly are not "posttraditional" in the sense of being simply disconnected from cultural or religious tradition.

It would be problematic, however, if this inculturation were to go along with claims to an exclusive cultural heritage, claims that may follow from a teleological view of history, as criticized earlier by Kaviraj. When looking back into the past, we easily become "Hegelians" who regard the chain of historic events as entailing a concealed plan of history, a plan according to which antiquity harbors the "cultural genes" of what later ripened and finally culminated in the modern era. Modern democracy thus appears to have its "roots" in the ancient Greek polis. Likewise, modern standards of human rights seem to be grounded in the basic sources of Occidental culture, religion, and philosophy at large. And even modern secularism often is traced back to the Bible, for example, to the word of Jesus: "render unto Cesar the things which are Cesar's and unto God the things that are God's" (Matthew 22:21). Such a Hegelian way of thinking easily leads to the assumption that what is "rooted" in the original sources of a particular culture can legitimately be claimed as an exclusive heritage of that culture. Against such an essentialist appropriation, it is necessary to reflect on the contingency of human history, a history that does not develop in the way of a "natural unfolding" of a preexisting cultural potential. Recalling this contingency of human history would be a first step toward abandoning the essentialist appropriation of human rights that themselves cannot simply and exclusively be deduced from the "genes" of any particular culture.

One also should be aware of the hermeneutic standpoint from which we look at history. Connecting human rights to humanitarian elements within religious, philosophical, or cultural tradition is possible only from the standpoint of modernity. It is *from a modern standpoint* that we can discover traditional humanitarian motifs that allow building a bridge between the present and the past. It is in retrospective that we see an analogy between modern ideas of human dignity and the Biblical message of the person being an image of God. *By looking back into the past*, we can trace the genesis of the rule of law to the 1215 "Magna Charta" and other medieval or ancient documents. *In retrospective* it also might make sense to compare modern principles of freedom and equality to Luther's doctrine of the free religious conscience and the spiritual equality of all believers before God. And it is even possible to connect *retrospectively* secular human rights to aspects of a disenchantment of the cosmos that can be found already in the Bible. Generally speaking, hermeneutic awareness should teach us that the previously mentioned traditional ideas are not "roots" or "sources" that harbor the potential of modern human rights, a potential that gradually ripened in history. It is the other way

around in that the modern idea of human rights characterizes the standpoint from which we can *retrospectively* discover humanitarian motives that facilitate a critical reconstruction of aspects of continuity between the present and the past.

In such a hermeneutical retrospective, not only aspects of continuity but also experiences of discontinuity and change should be taken into consideration. Down to the present day, the Christian churches have a tendency not to pay sufficient attention to the changes they had to undergo to be able to endorse human rights and religious liberty. Rather than ignoring or harmonizing traditional conflicts, however, it would be more appropriate to acknowledge the fact that the recognition of human rights on the part of the churches is the result of a complicated and lengthy learning process.[33] A self-critical reflection of this learning process, including all the misunderstandings, polemics, and reforms inevitably involved in such a process, would provide an excellent basis for interreligious and intercultural dialogue on human rights.

V. THE EUROPEAN HISTORY OF
HUMAN RIGHTS AS AN EXAMPLE

Back to the initial question: are human rights "a Western construct with limited applicability," to quote Pollis and Schwab? Obviously, the answer depends on what we understand by the "Western origin" of human rights. I have argued that human rights are neither a natural result of European culture and history nor completely disconnected from the Occidental tradition. On one hand, the idea of human rights is not "Western" in the emphatic sense of the word as if this idea were deeply rooted in the genes of the Occidental culture at large. On the other hand, the endorsement of human rights does not require us to abandon tradition altogether and to take a "posttraditional" standpoint, a standpoint from which "the West" would be merely a geographical term without any cultural meaning. Rather, the "Western origin" of human rights means the *simple fact* that the idea of universal rights of freedom and equality, so far as we know, was first proclaimed in Western Europe and North America. By investigating this historic fact more closely, we can discover various factors—political, economic, cultural, and religious—that in one way or another might have helped to foster the development of human rights. These factors, undoubtedly, also include important currents of the philosophical and religious tradition in the West. One should bear in mind, however, that the historic breakthrough of human rights took place at a time

when the traditional European society was in a *deep crisis*, a crisis triggered by the split of European Christendom in the wake of the Reformation as well as by decades of civil wars between conflicting religious and political factions. Crisis of tradition does not necessarily mean a decline or even a loss of tradition. What it does imply, however, is a serious transformation of tradition. Experiences of structural injustice—civil wars, religious intolerance, arbitrary detentions, and other acts of state oppression—demonstrated the urgency of far-reaching political and cultural reforms. Thus people gradually learned how to achieve peaceful coexistence and cooperation in a modern pluralist society on the basis of equal freedom and participation, that is, in the normative framework of human rights and democracy.

The modern awareness of freedom has its ethical core in the profession of human dignity. Understanding human dignity in Kantian terms as moral autonomy and connecting this autonomy to universal rights of freedom and participation certainly is a specifically modern achievement.[34] For all the novelty of universal human rights, however, the underlying profession of dignity can at the same time be meaningfully connected to the Bible, to Stoic philosophy, and to other founding documents of what we usually call the Western tradition. Although human rights cannot simply be derived from this tradition in a deductivist or essentialist way, they certainly are not "posttraditional" in the sense that all connection between modern rights conceptions and traditional ethical principles must be severed.

Two systematic insights can be gained from looking at the European history of human rights, insights that can be helpful for a cross-cultural normative dialogue. On one hand, European history shows that people fighting for their basic rights often faced a lot of *resistance*. This resistance not only was a political one but also included cultural and religious opposition epitomized, for example, by the Christian churches that, over a considerable period of time, were quite reluctant to support modern principles of political emancipation. On the other hand, European history also shows that a critical *reconciliation* between modernity and tradition was possible, a reconciliation that today clearly includes the churches, meanwhile often ardent advocates of human rights.

The history of human rights in the West is not a binding "model" that allows us to make forecasts about the prospects of human rights in other parts of the world, nor should this Western history be covered by a "veil of ignorance" on behalf of a purportedly neutral standpoint in cross-cultural debates. Rather, the history of human rights in the West gives us an *example*—not the paradigm per se but merely an example—of the various obstacles, misunderstandings, learning processes, achievements, and failures in the long-lasting

struggle for human rights. Such a self-critical historic perspective may enhance our sensitivity for the problems and opportunities, be they different or similar, that human rights advocates are facing in "non-Western" cultural contexts as well.

Perhaps even more important, a self-critical attitude of Europeans and North Americans toward their own complex and complicated history of human rights also is a necessary precondition for overcoming the suspicion, on the part of many people, that by fighting for human rights "Westerners" simply try to impose their own cultural values and norms in an imperialistic fashion. This suspicion is widespread in Muslim countries whose populations historically suffered from European colonialism and, in many cases, still feel threatened by Western imperialism. In the face of such widespread mistrust, it seems all the more important to make it clear that human rights do not constitute a set of essentially Western values that are to be exported on a global scale. Rather, what underlies human rights is experiences of structural injustice culminating in those "barbarous acts" that, as the "Universal Declaration of Human Rights" of 1948 emphasizes in its preamble, "have outraged the conscience of mankind."[35] Taking seriously this fundamental experience requires us to embark on a common learning process toward establishing efficient human rights mechanisms, a learning process in which claims of cultural legacies should cease to play a dominant political role.

VI. CONFLICTS BETWEEN
SHARIAH AND HUMAN RIGHTS

It is a trivial observation that religion constitutes merely one component within a whole range of political, economic, social, and cultural factors that inhibit or foster the implementation of human rights. When it comes to Islamic countries, however, this truism seems worth recalling because Islamic religion and culture often are portrayed as being the chief obstacle to an improvement of the troubling human rights situation in some of these countries. Against such a one-sided view, Faath and Mattes point out that most of the human rights violations that they have analyzed in North Africa do not show specifically "Islamic" features.[36]

On the other hand, one can hardly deny that the relationship between Islam and human rights is complicated and raises a number of problems. These problems do not derive from Islam per se but have to do with the Islamic shariah, or more precisely, with traditional or fundamentalist interpretations of the shariah by which the latter is rendered a comprehensive sys-

tem of politically enforcible normative regulations. Given the fact that the basic features of the shariah developed in the first centuries of Islamic history,[37] whereas the historical breakthrough of human rights was roughly a millennium later, differences and conflicts between these two normative systems can be no surprise. Concrete conflicts center primarily around questions of gender equality and religious liberty. Although acknowledging women's legal personality, the traditional shariah did not include the principle of *equality in rights* for men and women. It is especially in matters of marriage, family life, divorce, and inheritance that differences in legal standing between the genders have persisted to the present day. Measured against the benchmark of modern human rights, they must be regarded as discriminating against women.[38] Furthermore, despite the Islamic tradition of religious tolerance, some forms of discrimination against religious minorities, such as restrictions on interreligious marriages, are still legally in force in most contemporary Islamic countries today. Another infringement on religious liberty stems from the shariah ban on "apostasy." There is a minority of Islamic countries, such as Iran, Sudan, and Saudi Arabia, in which apostates from Islam are threatened by capital punishment. But even in those more "moderate" countries in which the death penalty for conversion from Islam to another religion no longer exists, other legal sanctions, including enforced dissolution of the convert's marriage, run counter to the human right to adopt a religion on the basis of a person's free decision.[39] Besides these problems of gender equality and religious liberty, a minority among Islamic states apply shariah criminal law, including corporal punishments such as flogging and amputation of limbs, penalties that, from the standpoint of human rights, must be rejected as cruel and degrading.[40]

Facing these conflicts, the question arises as to whether and how practical solutions can be achieved. With regard to this question, different positions currently are being brought forward. Despite many overlaps, one can distinguish among four basic positions that I have labeled "Islamization" of human rights (section VII), pragmatic approaches (section VIII), liberal reconceptualization of the shariah (section IX), and secular positions (section X).[41]

VII. "ISLAMIZATION" OF HUMAN RIGHTS

One way of dealing with the relationship between Islamic shariah and human rights is simply to deny that there are any problems. Representatives of the traditionalist or fundamentalist currents of Islam typically claim that human rights always have been recognized in the Islamic shariah, which, due

to its divine origin, provides an absolute foundation for protecting the rights and duties of every human being. An early example of this tendency is the booklet, *Human Rights in Islam*, written by Mawdudi. While adopting modern rights language, Mawdudi never addresses critically the previously mentioned conflicts between shariah and human rights. Moreover, his section on "Equality of Human Beings" reveals a rather restricted understanding of equality. Whereas Mawdudi rejects "all distinctions based on colour, race, language, or nationality,"[42] his list of criteria of nondiscrimination does not include gender and religion, the two main issues over which traditional shariah and modern human rights collide. Mawdudi's approach, after all, leads to a superficial and uncritical "Islamization" of human rights, that is, an ideological conception that certainly is not less essentialist than are essentialist "Western" or "Christian" readings of human rights. The widespread tendency in Western concepts of human rights to claim that these rights have their "roots" in the Occidental tradition can thus analogously be found in essentialist Islamic interpretations that trace human rights back to Qur'an and Sunna.

A radical example of an essentialist Islamic occupation of the concept of human rights was given by some Iranian participants of the fourth German-Iranian conference on human rights, which took place in November 1994 in Tehran.[43] At the opening of the conference, the Ayatollah Taskhiri from the holy city of Ghom presented a conservative Islamic conception of human rights from which he drew the conclusion that a full understanding of these rights must be reserved to faithful Muslims. In his exclusivist and dogmatic approach, the ayatollah compromised even the idea of universal human dignity by distinguishing between a "potential" and an "actual" dignity. Assuming that all human beings are called on to lead a virtuous life well pleasing to God, all humans, he said, are "potentially" equal in their human dignity. However, it was clear to Taskhiri that he who fulfills his duty faithfully ultimately can claim a higher degree of "actual" dignity than he who fails to meet the religious standard, let alone he who refuses to accept his divine vocation altogether. This is to say that such a dogmatic type of reference to a divine foundation of human dignity leads to a concept of dignity that, in sharp contradiction to article 1 of the Universal Declaration of Human Rights, serves as a vindication of human *inequality* rather than justifying universal equality of all human beings in dignity and freedom.

Such a tendency of an essentialist "Islamization" of human rights meanwhile has found expression in a number of semi-official documents on human rights issued by various Islamic organizations.[44] For example, the final theses of a seminar on human rights in Islam held in 1980 in Kuwait include the following statement: "Islam was the first to recognise basic

human rights and almost [fourteen] centuries ago it set up guarantees and safeguards that have only recently been incorporated in[to] universal declarations of human rights."[45] Likewise, the introduction to the "Universal Islamic Declaration of Human Rights," issued in 1981 by the Islamic Council of Europe (a nongovernmental organization sponsored by Saudi Arabia), starts as follows: "fourteen hundred years ago, Islam gave to humanity an ideal code of human rights."[46]

A more recent example of this essentialist tendency is the declaration of "Human Rights in Islam," adopted by the foreign ministers of the Organization of the Islamic Conference (OIC) at the 1990 annual session of the OIC held in Cairo.[47] The central role of the Islamic shariah as both the frame of reference and the guideline of interpretation of the Cairo declaration manifests itself throughout the document, especially in its two final articles that state, "All the rights and freedoms stipulated in this declaration are subject to the Islamic shariah. The Islamic shariah is the only source of reference for the explanation or clarification of any of the articles of this declaration."[48] In article 1 the Cairo declaration emphasizes that all human beings are "equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status, or other considerations." This concept of equality clearly goes beyond Mawdudi's and Taskiri's understanding and yet remains vague because equality in dignity is not clearly connected to claims of equal *rights*. The same problem comes to the fore in article 6 of the Cairo declaration. While stressing equal dignity of men and women, the article concludes with a statement that seems to support the traditional role division between husband and wife: "the husband is responsible for the support and welfare of the family." What is striking in article 5, which also deals with family matters, is the formulation that the right to marry and build a family should not be restricted according to criteria "stemming from race, colour, or nationality." What is missing in this formulation is a rejection of restrictions based on religious difference. Thus traditional shariah obstacles to interreligious marriages remain unchallenged. Even more troubling is article 10, which not only gives Islam a privileged status superior to all other religions but also seems to ban missionary work among Muslims. The article reads as follows: "Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism." Protection of the Islamic religion, as demanded by traditional shariah interpretations, thus apparently prevails over religious freedom of the individual as well as over the principle of equality of different religions. In short, the Cairo declaration

amounts to a one-sided and uncritical Islamization of human rights language at the expense of both the universalism and the emancipatory spirit of human rights.

VIII. PRAGMATIC REFORMS IN THE FRAMEWORK OF THE SHARIAH

If conservative Muslims frequently are reluctant to undertake an open criticism of the traditional shariah, this does not mean that changes toward modern human rights are completely excluded. From early on, Islamic scholars had to face the problem that legal norms and institutions of non-Islamic origin played a role, sometimes an important one, in Muslim societies. To deal with this situation, legal elements of non-Islamic origin had to be integrated into the overarching framework of the shariah, for example, by referring to some general principles such as that of common welfare (*maslaha*). Whatever seemed to be useful for society could thus be justified as being in accordance with, and indeed part of, the shariah. At the same time, those elements of the shariah whose implementation could lead to undesired consequences were suspended pragmatically. It was argued that a full and thorough implementation of the shariah could be enacted only under ideal circumstances as it was the case in the original Muslim community of Medina. As Schacht observes, "As long as the sacred law received formal recognition as a religious ideal, it did not insist on being fully applied in practice."[49] Thus except for some "puritan" shariah schools, flexible interpretation and pragmatic application of the normative rules always have accommodated moderate reforms. As a result, within most shariah schools, a tradition of humanitarian pragmatism has developed that facilitates a mediation between the validity claims based on religious revelation and the practical necessities of daily life. The Qur'an itself seems to justify this attitude given that Sura 2:185 emphasizes, "God intends every facility for you; he does not want to put you to difficulties." The humanitarian pragmatism that is typical of large currents within Islam today also permits taking steps toward a gradual reconciliation with modern ideas of freedom and equality, even though the conceptual differences between shariah and human rights might yet remain unsettled.

With regard to amputation penalties, for example, many Muslims refer to a precedent enacted by the second caliph Omar, who is said to have suspended amputation for theft in times of starvation.[50] From this precedent, even conservative Muslims often conclude that such cruel forms of corporal punishment should not be applied in practice unless and until a perfectly just

society will be achieved. That is to say, even those Muslims who do not deny the *validity* of the harsh shariah penalties in theory frequently reject their *applicability* by invoking insuperable obstacles to their practical implementation. Such a way of reasoning is not thoroughly new. As Schacht emphasizes, there always has been "a strong tendency to restrict the applicability of *hadd* punishments [i.e., punishments based on divine guidance] as much as possible."[51] To achieve this goal, traditional shariah schools introduced narrow definitions of the crimes in question, short statutes of limitation, and extremely high evidentiary requirements. The fact that the vast majority of contemporary Islamic states do not list shariah penalties in their criminal codes does not seem to pose a problem for the Islamic population at large. On the contrary, many Muslims, including moderate conservatives, hold the opinion that the cruel forms of corporal punishment mentioned in the Qur'an are meant to be an ethical admonition and should be no part of an applicable criminal code.[52]

Pragmatic interpretation of the shariah also has helped to bring about a tradition of religious tolerance. To be sure, this traditional Islamic tolerance should not be equated with religious liberty in the modern understanding of human rights because traditional tolerance does not imply *equality* of rights. But still it is worth emphasizing that "the Muslim world, when judged by the standard of the day, generally showed far greater tolerance and humanity in its treatment of religious minorities than did the Christian West," as Mayer observes.[53] Although in theory only the "people of the book" (i.e., adherents of the monotheistic religions of revelation) could count on being tolerated, in practice coexistence between Muslims and members of other religions, such as the Hindu religions in India, also proved possible.[54] Although in theory apostasy was considered a capital crime, there are few examples of executions of apostates in recent Islamic history. During the Ottoman Empire, the last death penalty for apostasy reportedly was carried out in 1843.[55] When in January 1985 Mahmoud Muhammad Taha, a Sudanese Muslim reformer, was publicly executed as a "heretic," many Muslims in Sudan were shocked. As Mayer reports, "Outrage and disgust over the execution and televised heresy trial prevailed, even among Sudanese Muslims who had no personal sympathy for Taha's theological positions."[56]

Pragmatic reforms are even possible in the delicate issues of shariah family law. In his study on *Law Reform in the Muslim World*, Anderson presents a number of impressive examples in this field. The 1917 Ottoman Law of Family Rights, for example, was meant to curb polygamy by officially recognizing stipulations that, on a voluntary basis, could be inserted into a marriage contract to bestow the wife with the right to judicial divorce in case her hus-

band took a second wife.[57] Again, whereas the theoretical *validity* of polygamy remained unchallenged, the *practice* of polygamy could be restricted to a certain degree. At the same time, this reform slightly improved women's opportunities to go to court to get judicial divorces. It might be worth mentioning in this context that already at the end of the nineteenth century, the famous Muslim reformer Mohammed Abduh argued that the Qur'an prohibits polygamy implicitly because the theoretical permission to marry more than one wife depends on the prerequisite that the husband can do justice to all his wives (Sura 4:3), a prerequisite that, according to the Qur'an itself, hardly ever can be met: "try as you may, you cannot treat all your wives impartially" (Sura 4:129).[58] This is another example that new interpretations of the shariah can lead to gradual reforms without denying the validity claims of traditional shariah in theory.

IX. CRITICAL RECONCEPTUALIZATION OF THE SHARIAH

Although the possibilities of pragmatic reforms within the framework of the shariah should be taken into consideration, one also should be aware of the limits of such a pragmatic approach. So long as the superiority of the shariah as a divine and inalterable set of legal norms is unchallenged in theory, the legitimacy of human rights remains precarious. Either human rights suffer from the failure of not being considered legitimate in the full sense of the word, or the danger arises that conceptual differences between shariah law and human rights are simply harmonized with the result of an "Islamized" version of human rights.

Liberal Muslim intellectuals therefore do not content themselves with suggesting merely pragmatic reforms. What they demand is a courageous and frank criticism of the Islamic shariah, a criticism that, although not necessarily calling for the dismembering of the shariah tradition, is meant to lead to a thoroughly revised understanding of the main sources of the shariah, namely, Qur'an and Sunna. Liberal reformers argue that by means of such a critical examination, the shariah can be liberated from the bulk of medieval legal casuistry that, in the course of time, has unjustifiably overshadowed the essential normative message of Qur'an and Sunna.[59]

With regard to Qur'an and Sunna, Rahman points to the progressive tendencies embodied in the original normative guidance of Islam, tendencies that later have been lost to a large degree. What is therefore needed, he argues, is not blind or passive submission to given legalistic rules but instead an

active and responsible type of obedience that tries to capture the deeper meaning of the Qur'anic principles and apply them to the ever changing needs and circumstances of human society. Rahman writes,

> Whereas the spirit of the Qur'anic legislation exhibits an obvious direction towards the progressive embodiment of the fundamental human values of freedom and responsibility in fresh legislation, nevertheless the actual legislation of the Qur'an had partly to accept the then existing society as a term of reference. This clearly means that the actual legislation of the Qur'an cannot have been meant to be literally eternal by the Qur'an itself.[60]

Some reformers go a step further by calling into question the mainly juridical connotations of the shariah. Ashmawy, a well-known Egyptian judge, points out that the term "shariah" etymologically does not mean "law" or "jurisprudence"; it originally means something like "the path to the source in the desert," which is a metaphor for religious and ethical guidance in the broadest sense.[61] Ashmawy therefore insists that the shariah not be equated with traditional jurisprudence (*fiqh*), as often happens. He even accuses those who blur the line between revelatory guidance and historic jurisprudence of coming close to polytheism because they dilute the uniqueness of divine revelation by mixing it with the results of human legislation and human juris-prudence.[62] By distinguishing clearly between shariah and fiqh, the body of norms that usually has been called "Islamic law" can be analyzed as a result of human history with all its contingencies. This opens up the conceptual space for historic criticism as well as political reforms in accordance with democratic principles and modern standards of human rights.

Liberal Muslims further argue that the principles of human rights and democracy can be connected meaningfully with the spirit of the shariah, pro-vided that the shariah is primarily understood as an ethical and a religious concept rather than as a legalistic one. The Qur'an, which is the main source of the shariah, repeatedly emphasizes the dignity of the human person. According to Sura 2:30, God has called on Adam to act as his deputy (*khalifa*) on earth, thus giving him a special rank above all other creatures. God even commands that the angels bow down before man (Sura 2:34). Along a similar line, Sura 17:70 emphasizes that God has honored the children of Adam. Sura 33:72 tells the story that when God, at the very beginning of time, offered a divine trust (*amana*) to the heavens, the earth, and the mountains, they all shrank back from accepting it because they were frightened by this offer. By contrast, man, although being frail and vulnerable, proved courageous enough to take on the divine trust voluntarily, thus showing himself superior to the most mighty things of nature including heaven and earth.[63] Hassan, an Islamic feminist, reads these and other verses of the Qur'an as an Islamic

foundation of the dignity of every person as "an end in itself," as she puts it using Kantian terms.[64]

A very courageous and, at the same time, highly controversial interpretation of the Qur'an has been proposed by the Sudanese scholar An-Na'im. Taking up a method developed by his teacher Taha, An-Na'im distinguishes systematically between suras revealed in Mecca and suras revealed in Medina. This difference always has been acknowledged in Islamic exegesis. What is new in An-Na'im's approach, however, is that he understands the two stages of revelation as entailing a theological ranking: whereas the suras of the Mecca period contain the eternal theological message of Islam, the Medina parts of the Qur'an refer mostly to the specific needs and circumstances of the first Muslim community and cannot be immediately applied to modern society.[65] Although An-Na'im does not deny the divine character of the Qur'an in its entirety, he introduces a criterion by which he can distinguish between different degrees of validity within the Qur'an itself. Whereas, in An-Na'im's opinion, some Qur'anic principles are indeed of timeless validity, others contain rules that can be appreciated as *examples* of an Islamic way of life within a particular historic context without being immediately binding for Muslims today. In such a way, An-Na'im wants to develop a modern version of Islamic law that is to be in accordance with international standards of human rights.

An-Na'im is not the only contemporary Muslim scholar who calls for a new hermeneutic approach to reading the Qur'an, although there are few who share his specific methodology.[66] Rahman, for example, criticizes the common exegesis of the Qur'an as "piecemeal, ad hoc, and often quite extrinsic."[67] Making use of modern hermeneutics to achieve a more subtle understanding of the text is therefore an urgent need. Othman, a representative of the Malaysian "Sisters in Islam" (a liberal Islamic nongovernmental organization committed to promoting women's rights), points to the difference between the time of revelation and the present day, a difference that always must be taken into consideration for an appropriate understanding of the Qur'anic text to be possible. She writes,

> We in the present have to read those texts in order to understand them at all; but in seeking to understand them, we—like all Muslims throughout history—bring to our own reading of those past texts the frameworks of understanding of our own time and place. We hear the past voices that speak to us speaking with contemporary accents, as it were—our own. So we are always, like all the great *ulama* of the past—even if they were not aware of it—both reading the present back into the past from which we seek contemporary guidance and also left with the problem . . . of deciding how we are now to implement or proceed upon that understanding.[68]

The awareness of historic distance, Othman argues, is a way in which to do justice to the Qur'anic text. At the same time, this hermeneutic awareness helps to fight the temptation to simply "apply" purportedly timeless Qur'anic principles to the different circumstances of a society as we enter the twenty-first century.

The Egyptian professor Abu Zaid thinks along similar lines. The purpose of his proposal of a new hermeneutics is to recapture critically the guiding principles of the Qur'an out of those many historical details that belong to the circumstances of revelation but do not constitute the essential message of the Qur'an. In this way, he wants to bring to new life the spirit of justice that, in his opinion, lies at the core of the Qur'anic ethical principles. Among other things, Abu Zaid calls for reforms in the field of Islamic inheritance law because he thinks that the general tendency of Qur'anic justice is to foster equality among all human beings. What matters for Abu Zaid is that the Qur'an endows women with dignity and respect, thus giving them a legal standing that they did not enjoy in pre-Islamic times. However, concrete details, such as the difference between men and women in their heritage claims, should be seen as a historically contextualized application of this general tendency. These historic details should therefore not prevent modern Muslims from going further in the general direction of justice and equality as demanded by the Qur'an.[69]

A decidedly feminist reading of the Qur'an has been proposed by Hassan. She refers primarily to the strict monotheistic creed that constitutes the theological center of Islam. In the light of the Islamic warning that the transcendence of the divine creator must never be amalgamated with his creation, Hassan argues that the invocation of God as a pretext to legitimize earthly power relations must be rejected as a violation of Islam. In particular, she attacks the traditional hierarchy between the genders that often has provided the husband with almost a quasi-divine authority. According to Hassan, this religious justification of social authority borders on blasphemy. She thus points out sarcastically,

> The husband, in fact, is regarded as his wife's gateway to heaven or hell and the arbiter of her final destiny. That such an idea can exist within the framework of Islam—which totally rejects the idea of redemption, of any intermediary between a believer and the Creator—represents both a profound irony and a great tragedy.[70]

Hassan's argumentation demonstrates that the Islamic doctrine of strict monotheism, a doctrine from which fundamentalist authors such as Mawdudi derive authoritarian political consequences, also can be understood in an

emancipatory sense in that monotheism provides a theological basis for chal-
lenging absolute power relations among human beings.

It also is with reference to the monotheistic creed that Talbi, a Tunesian
scholar and committed human rights advocate, calls for a full implementa-
tion of religious liberty, beyond the limits of traditional Islamic tolerance. He
is convinced that respect for the inscrutable divine will implies respect for
one's fellow human beings' inner convictions, for no one can pretend to know
God's plan with the individual person. Talbi comes to the conclusion that

> from a Muslim perspective . . . , religious liberty is fundamentally and ultimately an act
> of respect for God's sovereignty and for the mystery of His plan for man, who has been
> given the terrible privilege of building on his own responsibility his destiny on earth and
> for the hereafter. Finally, to respect man's freedom is to respect God's plan.[71]

X. POLITICAL SECULARISM IN ISLAM

Islamic monotheism also has been taken up as an argument for promoting
a secular understanding of law and politics. Political secularism currently is
not a popular position in most Islamic countries.[72] Even liberal Muslims
mostly show reluctance to endorsing secularist concepts that they often asso-
ciate with an anti-religious ideology. In general, there seems to be little
awareness in the Islamic context about the fundamental difference between a
political secularism based on religious liberty, on one hand, and an ideologi-
cal form of secularism that aims at banning religion from the public space, on
the other.[73] Nevertheless, there are a number of Muslim thinkers who explic-
itly plea on behalf of secular political and legal reforms by referring to genu-
inely theological arguments.

One of the first advocates of political secularism in Islam was Abdarraziq,
a professor of the prestigious Al-Azhar University in Cairo, who in his
famous book on *Islam and the Bases of Power* (1925)[74] welcomed the abol-
ishment of the caliphate, an event that had stirred emotions throughout the
Islamic world. Abdarraziq points to the fact that the Qur'an does not contain
any detailed guidance as to how to build and govern a state. If it is true that the
Qur'an is the final and complete book of revelation, as faithful Muslims
assume, then it follows that state politics cannot belong to the core message
of Islam. Consequently, Abdarraziq draws a clear conceptual distinction
between the prophetic and the political roles of Muhammad. Whereas
Muhammad epitomizes a timeless religious authority as the "seal of the
prophets," his role as political leader was due to the historic circumstances of
the first Islamic community in Medina.

During all his life, the Prophet made no allusion to anything which could be called an "Islamic state" or an "Arab state." It would be blasphemy to think otherwise. The Prophet did not leave this earth until he had entirely accomplished the mission given him by God and had explained to his nation the precepts of religion in their entirety without leaving anything vague or equivocal.[75]

Abdarraziq further argues that the caliphs' pretension of religious authority, culminating in the title of "God's shadow on earth," amounts to idolatry, which is one of the gravest sins in Islam. Hence his conclusion that the end of the caliphate, far from being a religious disaster, can indeed be appreciated as a liberation of Islam: "Muslims are free to demolish this worn-out system (of the caliphate) before which they have debased and humiliated themselves. They are free to establish the bases of their kingdom and the organisation of their state according to more recent conceptions of the human spirit."[76]

Taking up Abdarraziq's line of thought, Ashmawy calls the confusion of religion and state politics a "perversity"[77] because it is destructive to both; it debases religion by rendering it an instrument of everyday power politics, and it necessarily results in a problematic sacralization of politics that itself is thereby shielded against critical public discourse. Whereas theocracy, in which earthly rulers claim a quasi-divine authority, comes close to polytheism,[78] the monotheistic dogma of Islam, according to Ashmawy, demands a clear conceptional and institutional distinction between state and religion. This distinction opens up the space for political and legal reforms on behalf of human rights whose basic normative idea, the recognition of every person's unalienable dignity, at the same time fits together with the ethical teachings of the Qur'an.

Zakariya, another Egyptian author, unmasks the antithesis of "divine law" versus "human law" as an ideological construction. Those who conjure up divine law to legitimize their own political positions and interests actually are and remain finite human beings. However, they refuse to recognize their finiteness and to submit their political projects to an open democratic discourse and criticism. Zakariya writes,

The real alternative is not one between divine law . . . and human law. It is the alternative between two versions of human law, one of which admits frankly to be human whereas the other version pretends to speak in the name of divine revelation. This latter version of human law is dangerous because it tends to base its particular positions on divine law, thus attributing to its passions and errors a sacredness and infallibility to which it has no title.[79]

In contrast to such an ideological occupation of divine law, political secularism tries to do justice to the finite nature of human beings. At the same time,

political secularism can be understood as an expression of respect for the transcendence of the one God whose inscrutable will must never be instrumentalized for the purposes of power politics.

XI. CONCLUSION: TOWARD A CROSS-CULTURAL "OVERLAPPING CONSENSUS" ON HUMAN RIGHTS

Both in Western and in Islamic countries, human rights have become a matter of debate and controversy. The multiplicity of positions voiced in this debate range from liberalism to conservatism, from libertarianism to socialism, and from theocratic claims to outspoken secular ideas. Hence there is no such thing as *the* Western or *the* Islamic conception of human rights. Historic analysis indeed shows that human rights always have been a *political* issue, not the natural result of any "organic" development based on the genes of a particular culture. Therefore any cultural essentialist occupation, such as an "Occidentalization" or an "Islamization" of human rights, should be rejected.

The rejection of cultural essentialism, however, does not imply that cultural aspects become altogether meaningless. On the contrary, culture and religion can be, and indeed often are, powerful motives of practical commitment on behalf of human rights, motives that deserve to be recognized historically and to be cherished politically. Hence the question of how we can maintain the connection between human rights and religious or cultural tradition without getting trapped in the culturalist fallacy.

What I would like to suggest is that we understand human rights as the center of a cross-cultural "overlapping consensus" on basic normative standards in our increasingly multicultural societies. It is well known that the term "overlapping consensus" was coined by Rawls.[80] What Rawls wants to clarify by introducing this concept is the complex relationship between the guiding idea of political justice in a modern liberal society, on one hand, and the multiplicity of religious or philosophical convictions held by the members of that society, on the other. Although Rawls's considerations neither refer to international issues nor cover questions of multiculturalism, some of his insights also may be helpful for an analysis of international human rights in a cross-cultural perspective. I take up three aspects from Rawls and apply them briefly to the topic of human rights: (1) the genuinely normative and critical claims of political justice, (2) the limited scope of political justice as compared to "comprehensive" worldviews, and (3) the possibility of appreciating political justice from different religious or philosophical perspectives.

1. Rawls repeatedly emphasizes that his concept of political justice goes beyond a mere *modus vivendi*; that is, it must be more than just a compromise between all those normative convictions that happen to exist in a given society. The liberal principles of political justice embody genuinely normative substance and thus are bound to collide, for example, with authoritarian values or racist political programs. In such a conflict, the principles of political justice claim a practical priority over competing values and convictions. The Rawlsian "overlapping consensus" is thus not merely a descriptive concept; it poses a critical challenge. What is at stake is not a factual consensus but rather a *normative consensus* in the sense that people holding different convictions should nevertheless be enabled to agree on some basic principles of justice so as to shape their coexistence and cooperation on the basis of equality and freedom. The "overlapping consensus" is an *ideal* for a pluralistic modern society, not a description of the status quo. On one hand, it opens up the conceptual space for a plurality of different world views, ideologies, religions, philosophical doctrines, and so on. On the other hand, the "overlapping consensus" also defines limits of political tolerance in a liberal society.[81]

Similarly, universal human rights have a critical normative force in that they are designed to lead to a political and legal order based on equal freedom and participation. Constituting a morally *demanding* conception, human rights are not from the outset compatible with all religious or philosophical doctrines or with all cultural ways of life. Howard is right in saying, "A culture and community based on systematic degradation must be challenged; if individual rights threaten such as society, so much the better. Human rights may sometimes require cultural rupture."[82] No society, culture, or religion can claim to comply with human rights unless it is willing to undertake political and intellectual reforms. It is no coincidence, for example, that the recognition of human rights on the part of the Catholic Church went along with far-reaching doctrinal changes including the renunciation of the traditional concept of state religion. Similarly, it seems clear that to achieve a critical reconciliation between human rights and Islamic tradition, reforms toward recognizing equal rights between the genders must be put on the agenda. And there can be no doubt that universal human rights and a traditional caste society do not fit together. In short, an "overlapping consensus" on human rights must go beyond the smallest common denominator between the existing traditional values of different cultures.[83] Human rights are a normatively *challenging* conception in that they call for changes, self-criticism, and reforms to foster the mutual recognition of human beings on the basis of equality.

2. To not overstate the normative claims of human rights, however, it is worth noting that their normative scope is limited. This is the second aspect I would like to take up from Rawls. To put it in his language, the idea of politi-

cal justice is not a "comprehensive doctrine" but instead focuses on "the basic structure of society."[84] The political and legal institutions underlying society might well be basic, yet they can hardly be called an all-encompassing *Weltanschauung*.

The same holds true for human rights. While constituting political and legal standards, they do not entail a comprehensive guidance as to how to lead one's life both as an individual and within one's community. Human rights do not give any answers to the existential questions of the meaning of life and death. And they do not provide rituals and symbols through which people can express their mutual respect and appreciation beyond the sphere of politics and law. In short, human rights are neither a "comprehensive doctrine" nor a comprehensive ethical code of conduct. They cannot compete with cultural and religious traditions, although they do exercise a critical effect on the interpretation and development of these traditions.

The focus of human rights is on political and legal justice. Although the emancipatory spirit of human rights certainly poses a challenge to authoritarian traditions, a multiplicity of religious or nonreligious worldviews, individual and communitarian ways of life, and an abundance of different cultural expressions are possible. Human rights do not constitute an all-encompassing "global ethics" or a globally binding "civil religion." Commitment on behalf of international human rights therefore should not be perceived or propagated as a modern form of missionary work, let alone as a new version of the Crusades. The idea of an "overlapping consensus" on human rights does not even require us to work for a worldwide ecumenical reconciliation between all religions and ideologies because people are free to define their (individual and communitarian) identities *against* each other, provided they respect universal equality in human dignity and rights.

3. Rawls points out that, although his idea of political justice is not a "comprehensive doctrine," it is, on the other hand, not simply disconnected from more comprehensive worldviews. He argues that the guiding idea of political justice can be meaningfully appreciated from the perspectives of various philosophical or religious doctrines. The same holds true for human rights. It is especially the idea of human dignity that can connect human rights with different religious, philosophical, and cultural traditions because the insight into the unalienable dignity of every human being constitutes both the basic ethical principle of human rights and a central element of the teachings of various religions and philosophies. The "Project on Religion and Human Rights," based in New York, has come to the conclusion that "there are elements in virtually all religious traditions that support peace, tolerance, freedom of conscience, dignity and equality of persons, and social justice."[85]

One should be anxious, however, to make sure that the appreciation of human rights from the standpoint of different religious or cultural traditions does not lead to forms of an essentialist occupation. It would be immediately problematic to "base" human rights on the Bible, the Qur'an, the holy scriptures of the Hindus, or the teachings of Confucius, for as a result of such deductivist and essentialist approaches, the idea of universal human rights would easily get lost in a variety of competing religious and cultural conceptions. What I have emphasized in this essay with regard to the "Western" tradition therefore applies to other traditions as well: one always should be aware of the hermeneutic problem that it is only in retrospective that we can build a bridge between modern human rights and the sources of religious or cultural tradition. Such a hermeneutical awareness is the best way in which to fight essentialist appropriations of human rights by which their inherent universalism would be swallowed up by competing claims of particular cultural legacies.

NOTES

1. Compare Adamantia Pollis and Peter Schwab, "Human Rights: A Western Construct with Limited Applicability," in *Human Rights: Cultural and Ideological Perspectives*, ed. Adamantia Pollis and Peter Schwab (New York: Praeger, 1979), 1-18.

2. Georg Picht, "Zum geistesgeschichtlichen Hintergrund der Lehre von den Menschenrechten," in *Hier und Jetzt: Philosophieren nach Auschwitz und Hiroshima* (Stuttgart, Germany: Klett-Cotta, 1980), 116-35 at 127.

3. Wolfgang Fikentscher, "Die heutige Bedeutung des nicht-säkularen Ursprungs der Grundrechte," in *Menschenrechte und Menschenwürde: Historische Voraussetzungen—säkulare Gestalt—christliches Verständnis*, ed. Ernst-Wolfgang Böckenförde and Robert Spaemann (Stuttgart, Germany: Klett-Cotta, 1987), 43-73 at 64.

4. Compare Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996), 70-72.

5. Bassam Tibi, *Im Schatten Allahs: Der Islam und die Menschenrechte* (Munich: Piper, 1994), 33-34.

6. Abul A'la Mawdudi, *Human Rights in Islam* (Leicester, UK: Islamic Foundation, 1976), 13.

7. On the following, compare Gerhard Oestreich, *Geschichte der Menschenrechte und Grundfreiheiten im Umriss*, 2nd ed. (Berlin: Duncker & Humblot, 1978).

8. Compare Marcus Aurelius, *The Communings with Himself*, rev. and trans. C. R. Haines (Cambridge, MA: Harvard University Press, 1987). "And thou forgettest how strong is the kinship between man and mankind, for it is a community not of corpuscles, or seed or blood, but of intelligence. And thou forgettest this too, that each man's intelligence is God and has emanated from Him" (p. 335).

9. On Las Casas, compare Joseph Höffner, *Kolonialismus und Evangelium: Spanische Kolonialethik im Goldenen Zeitalter*, 3rd ed. (Trier, Germany: Paulinus, 1972), 243 ff.

10. Compare Georg Friedrich Wilhelm Hegel, *Vorlesungen über die Philosophie der Geschichte*, Werke 12 (Frankfurt, Germany: Suhrkamp, 1986), 496.

11. Compare Georg Jellinek, "Die Erklärung der Menschen und Bürgerrechte," in *Zur Geschichte der Erklärung der Menschenrechte*, 2nd ed., ed. Roman Schnur (Darmstadt, Germany: Wissenschaftliche Buchgesellschaft, 1974), 1-77; Ernst Troeltsch, *Die Bedeutung des Protestantismus für die Entstehung der modernen Welt* (Munich: R. Oldenbourg, 1911), 60-62.

12. Quoted from Gerald Stourzh, "Die Begründung der Menschenrechte im englischen und amerikanischen Verfassungsdenken des 17 und 18 Jahrhunderts," in *Menschenrechte und Menschenwürde: Historische Voraussetzungen—säkulare Gestalt—christliches Verständnis*, ed. Böckenförde and Spaemann, 78-90 at 81.

13. Sudipta Kaviraj, "Universality and the Inescapability of History: How Universal Is a Declaration of Human Rights," in *Menschenrechte zwischen Universalisierungsanspruch und kultureller Kontextualisierung: Loccumer Protokolle 10/93*, ed. Hans May and Sybille Fritsch-Oppermann (Rehberg-Loccum, Germany: Evangelische Akademie Loccum, 1993), 75-96 at 81.

14. Paul calls on Philemon to receive Onesimus like a brother—"not now as a servant, but above a servant" (Philemon 16)—and not to punish him. The idea of spiritual equality before God thus indeed leads to ethical consequences. But Paul never challenges slavery politically.

15. Aurelius, *The Communings with Himself*, 19.

16. Compare Paulus Engelhard, "Was kann die Ethik des Thomas von Aquin zur kritischen Klärung und Begründung der Menschenrechte beitragen?" in *Modernes Freiheitsethos und christlicher Glaube: Beiträge zur Bestimmung der Menschenrechte*, ed. Johannes Schwartländer (Mainz, Germany: Grünewald, 1993), 138-64.

17. Compare Troeltsch, *Die Bedeutung des Protestantismus für die Entstehung der modernen Welt*, 62.

18. Edmund Burke, *Reflections on the Revolution in France: With an Introduction by A. J. Grieve* (London: Dent, 1910), 30.

19. Ibid., 93.

20. On de Maistre, compare Paul Valadier, "Aktuelle Gefährdungen der Menschenrechte," in *Die Menschenrechte: Herkunft-Geltung-Gefährdung*, ed. Walter Odersky (Düsseldorf, Germany: Patmos, 1994), 23-37 at 25.

21. Hegel, *Vorlesungen über die Philosophie der Geschichte*, 535.

22. Karl Marx, "Zur Judenfrage," in *Marx-Engels Werke*, vol. 1 (East Berlin: Dietz, 1970), 347-77 at 364.

23. Carl Schmitt, *Der Begriff des Politischen* (Berlin: Duncker & Humblot, 1963), 71. See also Heiner Bielefeldt, "Deconstruction of the 'Rule of Law': Carl Schmitt's Philosophy of the Political," *Archiv für Rechts und Sozialphilosophy* (Archives for Philosophy of Law and Social Philosophy) 82 (1996): 379-96; David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar* (Oxford, UK: Clarendon, 1997).

24. Compare Hannah Arendt, *Elemente und Ursprünge totaler Herrschaft*, 2nd ed. (Munich: Piper, 1974), 466.

25. On the following, compare Konrad Hilpert, *Die Menschenrechte: Geschichte-Theologie-Aktualität* (Düsseldorf, Germany: Patmos, 1991), 137 ff.

26. Dieter Senghaas, *Wohin driftet die Welt? Über die Zukunft friedlicher Koexistenz* (Frankfurt, Germany: Suhrkamp, 1994), 112.

27. Compare Jürgen Habermas, *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats* (Frankfurt, Germany: Suhrkamp, 1992), 129.

28. Compare Hans Ebeling, *Der multikulturelle Traum: Von der Subversion des Rechts und der Moral* (Hamburg, Germany: Europäische Verlagsanstalt, 1994).

29. Compare ibid., 75.

30. Compare Hilpert, *Die Menschenrechte*, 146-48.

31. Lutheran World Federation, ed., *Theological Perspectives on Human Rights* (Geneva: Lutheran World Federation, 1977), 41.

32. Compare Jürgen Moltmann and Jan Milic Lochmann, eds., *Gottes Recht und Menschenrechte: Studien und Empfehlungen des Reformierten Weltbundes* (Neukirchen-Vluyn, Germany: Neukirchener Verlag, 1976), 66.

33. Compare Hilpert, *Die Menschenrechte*, 161-62.

34. Compare Heiner Bielefeldt, "Autonomy and Republicanism: Immanuel Kant's Philosophy of Freedom," *Political Theory* 25 (1997): 524-58.

35. Universal Declaration of Human Rights, adopted 10 Dec 1948, United Nations, General Assembly Resolution 217 A (III).

36. Compare Sigrid Faath and Hanspeter Mattes, eds., *Demokratie und Menschenrechte in Nordafrika* (Hamburg, Germany: edition wuquf, 1992), 133.

37. Compare Noel James Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964).

38. For a detailed analysis with reference to both the traditional shariah and the legal situation in contemporary Arab countries, compare Sami A. Aldeeb Abu-Sahlieh, *Les Musulmans faxe aux droits de l'homme: Religion & droit & politique*, Étude et documents (Bochum, Germany: Dr. Winkler, 1994), 159 ff.

39. On the questions of religious liberty and equality between Muslims and non-Muslim minorities, compare ibid., 87 ff.

40. Compare ibid., 59 ff.

41. A similar scheme also can be found in Christian Stahmann, "Islamische Menschenrechtskonzepte," *Zeitschrift für Evangelische Ethik* (Journal of Protestant Ethics) 38 (1994): 142-52.

42. Compare Mawdudi, *Human Rights in Islam*, 13.

43. See my conference report (in German) in *ORIENT: Zeitschrift des Deutschen Orient-Instituts* 33 (1995): 19-27.

44. Compare the collection of many of these documents (in French translation from Arabic) in Abu-Sahlieh, *Les Musulmans faxe aux droits de l'homme*, 461 ff.

45. International Commission of Lawyers, *Human Rights in Islam*, report of a seminar held in Kuwait in December 1980 (Geneva: International Commission of Lawyers, 1982), 9.

46. Quoted from the French translation from the originally Arab text in Abu-Sahlieh, *Les Musulmans faxe aux droits de l'homme*, 481. Note that an independent English and French version of the Universal Islamic Declaration of Human Rights was published by the Islamic Council of Europe itself. This translation, however, differs substantially from the Arab original text.

47. The declaration, however, has not yet been officially confirmed by the Organization of the Islamic Conference. Compare Lorenz Müller, *Islam und Menschenrechte: Sunnitische Muslime zwischen Islamismus, Säkularismus, und Modernismus* (Hamburg, Germany: Deutsches Orient-Institut, 1996), 120.

48. Articles 24 and 25 of the Cairo declaration. Quoted in *Conscience and Liberty: International Journal of Religious Freedom* 3 (Spring 1991): 90-95.

49. Joseph Schacht, *An Introduction to Islamic Law* (Oxford, UK: Clarendon, 1964), 84.

50. Compare Muhammad Said al-Ashmawy, *l'islamisme contre l'islam* (Paris: la découverte, 1989), 50.

51. Schacht, *An Introduction to Islamic Law*, 176.

52. Compare Ann Elizabeth Mayer, "A Critique of An'Na'im's Assessment of Islamic Criminal Justice," in *Islamic Law Reform and Human Rights: Challenges and Rejoinders*, ed.

Tore Lindholm and Kari Vogt (Copenhagen: Nordic Human Rights Publications, 1993), 37-60 at 58.

53. Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, CO: Westview, 1991), 148.

54. Compare Roy P. Mottahedeh, "Toward an Islamic Theology of Toleration," in *Islamic Law Reform and Human Rights*, ed. Lindholm and Vogt, 25-36 at 26.

55. Compare Baber Johansen, "Staat, Recht, und Religion im sunnitischen Islam: Können Muslime einen religionsneutralen Staat akzeptieren?" *Essener Gespräche zum Thema Staat und Kirche* 20 (1986): 12-60 at 45-46.

56. Mayer, *Islam and Human Rights*, 186.

57. Compare article 38 of the 1917 Ottoman Law of Family Rights. "If a woman stipulates in her marriage contract that her husband shall not marry another wife and that, should he do so, then either she herself or this other wife will be divorced, the contract is valid and the stipulation recognized." Quoted from James Norman D. Anderson, *Law Reform in the Muslim World* (London: Athlone, 1976), 49.

58. Compare Joseph L. Esposito, *Islam and Politics*, 3rd ed. (New York: Syracuse University Press, 1991), 51.

59. Compare Subhi Mahmasani, "Adaption of Islamic Jurisprudence to Modern Social Needs," in *Islam in Transition: Muslim Perspectives*, ed. John J. Donohue and John L. Esposito (Oxford, UK: Oxford University Press, 1982), 181-87.

60. Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 1966), 39.

61. Compare Ashmawy, *l'islamisme contre l'islam*, 124-25.

62. Compare ibid., 101.

63. Commenting on this verse, Rahman, *Islam*, points out, "There can be hardly a more penetrating and effective characterization of the human situation and man's frail and faltering nature, yet his innate boldness and the will to transcend the actual towards the ideal constitutes his uniqueness and greatness" (p. 35).

64. Compare Riffat Hassan, "On Human Rights and the Qur'anic Perspective," in *Human Rights in Religious Traditions*, ed. Arlene Swidler (New York: Pilgrim, 1982), 51-65 at 56.

65. Compare Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990), 54 ff.

66. For a critique of An-Na'im's methodology, compare Ishtiaq Ahmed, "Abdullahi An-Na'im on Constitutional and Human Rights Issues," in *Islamic Law Reform and Human Rights*, ed. Lindholm and Vogt, 61-74.

67. Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1982), 4.

68. Norani Othman, "The Sociopolitical Dimensions of Islamization in Malaysia: A Cultural Accommodation of Social Change?" in *Shari'a Law and the Modern Nation-State: A Malaysian Symposium*, ed. Norani Othman (Kuala Lumpur, Malaysia: Sisters in Islam Forum, 1994), 123-43 at 128.

69. Compare Nasr Hamid Abu Zaid, *Islam und Politik: Kritik des religiösen Diskurses*, trans. (from Arabic to German) Chérifa Magdi (Frankfurt, Germany: dipa, 1996), 179-80.

70. Hassan, "On Human Rights and the Qur'anic Perspective," 63.

71. Mohamed Talbi, "Religious Liberty: A Muslim Perspective," *Conscience and Liberty: International Journal of Religious Freedom* 3 (Spring 1991): 23-31 at 31.

72. Compare Rotraud Wielandt, "Zeitgenössische Ägyptische Stimmen zur Säkularisierungsproblematik," *Die Welt des Islams* (The World of Islam) 22 (1982): 117-33.

73. On this difference, compare Heiner Bielefeldt, "Secular Human Rights: Challenge and Opportunity to Christians and Muslims," *Islam and Christian-Muslim Relations* 7, no. 3 (1996): 311-25.

74. A French translation of this book (*L'islam et les bases du pouvoir*), originally written in Arabic, is available in *Revue des Études Islamiques*, vol. 7 (1933), pp. 353-91, and vol. 8 (1934), pp. 163-222.

75. Ali Abdarraziq, "The Caliphate and the Bases of Power," in *Islam in Transition*, ed. Donohue and Esposito, 29-37 at 34.

76. Ibid., 37.

77. Compare Ashmawy, *l'islamisme contre l'islam*, 11.

78. Compare ibid., 34, 85.

79. Fouad Zakariya, *Laicité ou islamisme: les arabes à l'heure du choix* (Paris: la découverte, 1989), 115.

80. Compare John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 133 ff.

81. To put it in Rawlsian terms, "unreasonable doctrines" are excluded from the "overlapping consensus." See ibid., 58 ff.

82. Rhoda E. Howard, *Human Rights and the Search for Community* (Boulder, CO: Westview, 1995), 9.

83. This, however, seems to be the approach taken by Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism* (Newbury Park, CA: Sage, 1990).

84. Compare Rawls, *Political Liberalism*, 11.

85. John Kelsay and Sumner B. Twiss, eds., *Religion and Human Rights* (New York: Project on Religion and Human Rights, 1994), 116.

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